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January 26, 2018

Ms. Alexis Strauss, Acting Regional Administrator
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, California 94105

RE: Statement of Legal Counsel Regarding the Basis of Tribal Authority Over Water
Quality in Support of the La Posta Band of Mission Indians' Application for Clean
Water Section 303 and 401 Program Authorization

Dear Ms. Strauss:

This letter describes the legal basis for the assertion of regulatory authority by the La Posta Band of Mission Indians ("Tribe") over the water resources of the La Posta Indian Reservation ("Reservation") and adjacent trust land in San Diego County, California. It is presented in support of the Application for Authorization to Administer a Water Quality Standards and Compliance Certification Program ("Application") submitted by the Tribe under Sections 303 and 401 of the Clean Water Act, 33 USC §§ 1313, 1341, in accordance with Section 518(e)(2) of the Clean Water Act, 33 USC § 1377(e)(2) and regulations set forth at 40 CFR § 131.8(b).

The Tribe is a federally recognized Indian tribe and appears on the most recent list of such tribes published periodically in the Federal Register. See 82 Fed.Reg 4,915 (Jan. 17, 2017); Application Attachment 1.

The Reservation, which consists of approximately 3,700 acres of land in two parcels known as "La Posta" and "Little La Posta," was created by the issuance of three Trust Patents (dated February 10, 1893, November 20, 1910 and April 5, 1911) in accordance with a January 12, 1891 Act of Congress, and was supplemented by the more recent passage of Public Law 100-581 (November 1, 1988) and the acquisition into trust of an additional parcel of land adjacent to the Reservation by Acceptance of Conveyance executed on or about October 28, 2016. See Application Attachments 2 & 3. All lands within each parcel are contiguous and held in trust by the United States for the benefit of the Tribe. There are no allotted lands or non-Indian lands within the exterior boundaries of the Reservation or adjacent trust land; nor are the boundaries in dispute.

The Reservation is a Federal Indian Reservation, as defined in 40 CFR § 131.3(k), in that it was reserved by the Federal Government for the benefit of the Tribe and remains under the jurisdiction of the United States. The territory over which the Tribe asserts jurisdictional authority is defined in Article II of its Constitution to include not only all lands and appurtenant resources within the Reservation, but also any additional lands acquired by the Tribe or by the United States for the benefit of the Tribe. See Application Attachment 4. As a result, the recently acquired trust land, as well as the Reservation, is within the Tribe's territory and under the jurisdictional authority of the Tribe.

The basis for the Tribe's assertion of authority under the Application is the express congressional delegation of authority to eligible Indian tribes to administer regulatory programs over their reservations contained in Section 518 of the Clean Water Act, 33 USC § 1377. This authority is described in the US Environmental Protection Agency's final interpretive rule, *Revised Interpretation of Clean Water Act Tribal Provision*, 81 Fed.Reg 30183 (May 16, 2016).

There are no limitations or impediments to the Tribe's authority or ability to effectuate the delegation of authority from Congress as described in the Application.

The Tribe's governmental authorities are exercised by its General Council, composed of all adult Tribal Members, and its Tribal Council, composed of elected officials, in accordance with its Constitution. See Application Attachment 4. As mentioned above, pursuant to Article II of the Constitution, the Tribe has and exercises jurisdiction over all persons, property, lands, water, air space, resources and activities occurring within the boundaries of the Reservation and all other lands within the jurisdiction of the Tribe.

Among other things, Article V of the Constitution vests the Tribal Council with the authority to negotiate and enter agreements with federal, state and local governments (Section 1(B)), manage, lease, contract or otherwise deal with assets and community resources, subject to General Council approval (Section 1(D)), protect and preserve the Tribe's natural and cultural resources Section 1(E)), regulate the use and disposition of lands within the Tribe's jurisdiction, subject to General Council approval (Section 1(F)), negotiate and issue leases for business purposes, and otherwise regulate business activities within the Tribe's jurisdiction, subject to General Council approval (Section 1(I)), and levy and collect taxes, duties, fees and assessments (Section 1(K)).

Through the passage of resolutions and enactment of ordinances, in accordance with these and other Constitutional authorities, the Tribal Council and General Council regularly perform governmental functions and exercise the Tribe's police powers, including those to protect and promote public health, safety and welfare of the Reservation population and to manage Tribal property and appurtenant resources. For example, the Councils negotiate leases of Tribal property and rights of way through the Reservation, prevent trespass by unauthorized persons, and provide, or arrange for the provision of, health care services, housing, water supply and other infrastructure, security, fire protection and emergency response for the benefit of the Tribe

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and Reservation community. Under the oversight of an Environmental Board that reports to the General Council, the La Posta Environmental Protection Agency ("LPEPA"), ensures protection of the Tribe's natural resources and the Reservation environment.

As described in more detail in Section 4 of the Application, and in Tribal applications for financial assistance eligibility under Clean Water Act §§ 106 and 319 previously submitted to USEPA ("FAE Applications"), since its creation in 1998 the LPEPA has successfully managed the Tribe's core environmental program as well as more recent air, water pollution control, wetlands, non-point source pollution control and emergency response programs. The LPEPA also monitors and ensures proper operation and maintenance of the Tribe's drinking water and wastewater systems, and has been designated the lead Tribal Agency to ensure that activities such as residential, community and commercial construction and other development comply with all applicable federal and Tribal laws and policies to ensure protection of human health and the environment within the Tribe's jurisdiction.

Surface waters that the Tribe is already monitoring and managing, and for which it may seek to establish water quality standards, include the reach of La Posta Creek that runs through Little La Posta, as well as the La Posta River and La Posta Lake, North River, South River and Crestwood Stream. See Application Attachments 5 and 6. These waters serve the Tribe's domestic, recreational and commercial needs, and support numerous species of wildlife that are of cultural, subsistence, recreational and commercial value to the Tribe.

The Tribe's technical and administrative capabilities to effectively manage and regulate the quality and use of these waters is demonstrated by the Tribe's historical management of numerous programs to protect the health, safety and welfare of the Tribal community and Reservation environment, examples of which are mentioned above and detailed in the Application and in the Tribe's previously-submitted FAE Applications. These capabilities will be further enhanced with the development during this fiscal year of a comprehensive set of environmental protection laws, including compliance and enforcement provisions, that will LPEPA will be responsible to implement.

The LPEPA will be the primary Tribal Agency responsible for establishing, reviewing, implementing and, as necessary, revising the Tribe's water quality standards; establishing a comprehensive baseline of existing water quality throughout the Tribe's jurisdiction; conducting ongoing monitoring; assessing the effectiveness of pollution controls; determining whether Tribal water quality standards are being attained and maintained; conducting anti-degradation reviews; considering and acting upon applications for certification under Clean Water Act § 401; and participating in consultations with USEPA and other federal agencies regarding appropriate considerations and conditions to be addressed in any Clean Water Act permits to be issued for activities that have the potential to impact Tribal water quality. The Tribe will ensure that LPEPA staff are properly trained and qualified to conduct sampling and analysis and undertake the additional responsibilities necessary to effectively implement the programs for which delegated authority is sought. The LPEPA may also retain appropriate contractors, on an as-needed basis, to implement any work that exceeds the capabilities of in-house staff.

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In light of the above, the La Posta Band of Mission Indians has the jurisdictional authority, as well as the technical and administrative capability, to operate a water quality standards and compliance certification program to protect waters within the La Posta Indian Reservation and adjacent Tribal trust land. Should you have any questions or require additional information or clarification regarding any matter related to the Tribe's Application for Authority to Administer a Water Quality Standards and Compliance Certification Program, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink, reading "Marta J. Burg". The signature is fluid and cursive, with the first name "Marta" and last name "Burg" clearly legible.

Marta J Burg
Principal Attorney

cc: La Posta Band of Mission Indians